IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

Crl.L.P..No. 320 of 2007()

CC.177/2005 of J.M.F.C.-II (ADDL. MUNSIFF), KASARAGOD

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PETITIONER/COMPLAINANT:

M/S.MAHINDRA AND MAHINDRA FINANCIAL
SERVICES LIMITED,HAVING ITS CORPORATE OFFICE
AT SADHANA HOUSE,2ND FLOOR,570 PB MARGG,
BEHIND MAHINDRA TOWERS,WORLI,MUMBAI-400018.
DULY REPRESENTED BY THE POWER OF ATTORNEY HOLDER
SRI.JOSHY M.C,AGED 40,BRANCH INCHARGE, M/S. MAHINDRA
AND MAHINDRA FINANCIAL SERVICES LIMITED, KASARAGOD
BRANCH.

BY ADV. SRI.DEVAPRASANTH.P.J.

RESPONDENTS: ACCUSED & STATE:

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1. SRI.PRASANNAKUMAR A.P,AGED 40 YEARS,
ADIYERI PARAMBATH HOUSE,MADHAVIPURAM,
KARICHERUYIL P.O,THALASSERYI,KANNUR DIST.

2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSEUCTOR,HIGH COURT OF KERALA.

BY P.P.SRI.S.DILEEP FOR R2

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. Thankappan, J.

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Crl.L.P. No. 320 of 2007

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Dated this the 13th day of June, 2007

O R D E R

The petitioner/complainant is a non-banking finance company. The case of the petitioner is that the 1st respondent had availed an amount of Rs.4,61,730/- for purchase of Mahindra Voyager Vehicle from the petitioner by entering into an agreement. It is stated that the above loan was agreed to be repaid in 12 monthly instalments. But, the 1st respondent committed defaults in repayments and as per the agreement the petitioner took possession of the vehicle and disposed of the same. Even after there was a balance amount of Rs.1,55000/- and in discharge of the said liability, the 1st respondent issued a cheque to the petitioner and when the cheque was presented for encashment, it was dishonoured for insufficiency of funds in the account of the 1st respondent. To prove the case against the 1st respondent, the petitioner who is the power of attorney holder was examined as PW1 and Exts.P1 to P5 were marked. When the 1st respondent was questioned under section 313 Cr.P.C., he denied the transaction and stated that he entered into a hire purchase agreement with the petitioner and on terms of the agreement the vehicle was transferred to

him. He also stated that while signing the agreement the petitioner obtained one signed blank cheque from him and the above cheque was misused for filing the complaint. To prove his case, the 1st respondent himself was examined as DW1 and Exts.D1 to D3 were marked. After considering the entire case and after relying on a decision of this Court reported in Sudha Beevi V. State of Kerala (2004 (2) KLT 746 the trial court found that "the owner has to take recourse to other legal remedies to recovery of the balance". Hence, the 1st respondent was acquitted.

2. The learned counsel for the petitioner submits that the facts considered in the decision relied on by the trial court are different from the facts and circumstances of the case in hand and hence the trial court has committed serious error in applying the principle enunciated by this Court.

3. Considering the entire facts and circumstances of the case, this Court finds that the trial court has correctly applied the dictum laid down in Sudha Beevi's case and hence, impugned judgment requires any interference by this Court. Accordingly, leave to appeal is rejected.

K. Thankappan,
Judge.

mn.

K.Thankappan,J.

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Crl.l.P.No. 135 /2007

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ORDER

2-3-2007